

*Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.*

## Proposed Rulemakings

### ■ COVID-19 VACCINATIONS

The STATE BOARD OF EDUCATION proposed a new Part titled Mandatory Vaccinations for School Personnel (23 IAC 6; 45 Ill Reg 15598) that will, upon adoption, replace an emergency rule effective 9/17/21. The new Part implements Executive Order 2021-22, which requires COVID-19 vaccination and/or testing for employees, volunteers, or contractual personnel of any public, private or charter K-12 school or school district, as well as employees of entities that have been contracted to provide services to a K-12 school or district (e.g., transportation or food service) if they come into close contact (6 feet or less for 15 minutes or more) with students or other school personnel at least once per week. It does not apply to persons whose contact with students or others is brief (e.g., persons making

### COVID-19 ACTIONS

Executive Orders of the Governor concerning the COVID-19 public health emergency can be accessed at <https://www2.illinois.gov/government/executive-orders>. Emergency rules adopted by State agencies will be summarized in The Flinn Report as they are published in the *Illinois Register*.

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deliveries or pickups). School personnel must receive or have received a single dose, or the 1<sup>st</sup> dose of a 2-dose series, of COVID-19 vaccine within 10 days after beginning their school-based role and must receive the 2<sup>nd</sup> dose, if applicable, within 30 days after the 1<sup>st</sup>. Proof of vaccination must be presented to the school

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## Adopted Rules

### STUDENT ASSESSMENTS

The STATE BOARD OF EDUCATION adopted an amendment to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 45 Ill Reg 8187) effective 12/1/21, replacing an emergency amendment that expired 8/20/21. The rulemaking allows the State assessment that normally must be administered to students in grade 11 to be administered in grade 11 or grade 12 when the Governor has declared a disaster due to a public health emergency and the U.S. Department of Education has granted SBE a waiver from accountability assessments.

### ■ AG EDUCATION

SBE also adopted amendments to Agricultural Education Program (23 IAC 75; 45 Ill Reg 8202)

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**ADOPTED RULES:** Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.  
**PROPOSED RULES:** Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.  
**PEREMPTORY RULES:** Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.  
■ Designates rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.  
**QUESTIONS/COMMENTS:** Submit mail, email or phone calls to the agency personnel listed below each summary.  
**RULE TEXT:** Available on the Secretary of State ([www.cyberdriveillinois.com](http://www.cyberdriveillinois.com)) and General Assembly ([www.ilga.gov](http://www.ilga.gov)) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

## Adopted Rules

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effective 12/1/21, updating the Part to include middle school agricultural education activities, an increase in the percentage of expenditures allowed for consumable items from 10% to 25%, and the addition of Regional Offices of Education, Intermediate Service Centers, and nonprofit organizations as eligible grant applicants. Ag education programs will follow a “three circle” model consisting of classroom/laboratory instruction, supervised agricultural experience (SAE), and FFA participation to promote leadership, personal growth and career success. Middle school (grades 5-8) ag education programs must include at least one State-approved introductory ag education course, with an appropriately licensed teacher, in an ag education career pathway that connects to a secondary (high school) program. The introductory course must include a career exploration component with SAE. A middle school program shall also connect to either a stand-alone middle school or a secondary FFA chapter. High school programs

must include at least one foundational course and one skill course, taught by an appropriately licensed teacher, for which at least 2 credits will be awarded. A high school program shall also be a State and nationally affiliated chapter of the National FFA Organization with student paid membership. The rulemaking also includes minimum and maximum hours/days to be allotted to various activities; qualifications for ag education program teachers; minimum standards/goals and quality indicators for ag programs; application procedures and allowable costs for ag education program grants; general cleanup and updates to terminology. Since 1<sup>st</sup> Notice, SBE has clarified the required content of high school programs and the rules applicable to ag education grants. Those affected by this rulemaking include school districts, regional offices of education, and businesses or nonprofit organizations providing supervised agricultural experience.

*Questions/requests for copies of the 2 SBE rulemakings: Azita Kakvand, SBE, 555 W. Monroe*

*St., Suite 900, Chicago, IL 60661, (312) 783-2757, [rules@isbe.net](mailto:rules@isbe.net)*

### ■ FOOD SERVICE

The DEPARTMENT OF REVENUE adopted an amendment to Retailers' Occupation Tax (86 IAC 130; 45 Ill Reg 8009) effective 12/3/21, affecting food service businesses that provide free meals to their employees. The cost of these meals for purposes of determining the employer's use tax liability will be 75 cents through 12/31/21 and \$3.50 effective 1/1/22. (The former cost benchmark was established in 1977 and has been adjusted for inflation.) Any tax liability incurred is to be paid at the rate that would have been imposed when the employer originally purchased the food from the supplier. Restaurants, hotels, catering services and other food service businesses are affected by this rulemaking.

*Questions/requests for copies: Alexis K. Overstreet, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.*

## Proposed Rulemakings

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immediately upon full vaccination. Exemptions from vaccination may be granted if vaccination is medically contraindicated or violates the individual's sincerely held religious belief or practice. Personnel who are not fully vaccinated (2 weeks after a single dose or completion of a 2-dose

series) or who are granted exemptions from vaccination must be tested at least weekly. If an outbreak occurs at the school, testing must be performed at least twice weekly. The rules in this Part will become inoperative when EO 2021-22 or any Executive Order that continues or extends it expires or is rescinded. School districts and private schools are affected.

### ■ SCHOOL RECOGNITION

SBE also proposed amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 45 Ill Reg 15576) and Voluntary Registration and Recognition of Nonpublic Schools (23 IAC 425; 45 Ill Reg 15892) that

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# Proposed Rulemakings

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will, upon adoption, replace emergency rules that were effective 10/28/21 and 11/22/21. The proposed rulemakings clarify the processes through which public and non-public schools receive or lose SBE recognition and through which schools may appeal a demotion in recognition status.

## Public Schools

Amendments to Part 1 provide that the State Superintendent assigns each public school and school district its recognition status (Fully Recognized, Recognized Pending Further Review, On Probation, or Nonrecognized) on an annual basis, based upon information provided by the school district, the regional superintendent, or by any other means. The State Superintendent may change the recognition status of a public school or district at any time, but Nonrecognized status can be assigned only after the State Board itself has reviewed the case and taken action. A school or district that is Recognized Pending Further Review or On Probation will not lose the rights and privileges of schools/districts that are Fully Recognized. If a school exhibits any of the deficiencies currently listed in rule that warrant demotion to On Probation status (e.g., health hazards/dangers to students or staff, failure to offer required coursework, employment of unqualified personnel), the State Superintendent must schedule a conference with SBE personnel and district representatives to

## SNAP ELIGIBILITY

The DEPARTMENT OF HUMAN SERVICES adopted an emergency amendment to Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; 45 Ill Reg 16072) effective 12/1/21 for a maximum of 150 days. An identical proposed amendment appears in this week's *Illinois Register* at 45 Ill Reg 15932. The emergency and proposed rulemakings implement a federally mandated adjustment to medical expense deductions that is intended to maintain the cost neutrality of the SNAP program. The standard medical deduction

discuss compliance issues prior to placing the school On Probation. If other, less serious deficiencies are evident, the State Superintendent will place the school in Recognized Pending Further Review status. The superintendent of a district demoted to a lower status has 10 days after receiving notification of the status change to appeal the decision to the State Board. An appeal hearing may take place in person or by videoconference or other electronic means. A district or school shall be restored to Fully Recognized status upon submission of satisfactory evidence that the district/school is in compliance with the applicable requirements that prompted the change in recognition status. If a school/district that is On Probation fails to submit a satisfactory

## Emergency Rule

from monthly income for households with elderly or disabled members who are not residents of group homes or supportive living facilities is reduced to \$150 (formerly \$165) per month. Households whose medical expenses exceed \$185 (formerly \$200) per month may claim actual expenses in excess of \$35 per month instead of the standard amount.

*Questions/requests for copies/ comments on the proposed rulemaking through 1/31/22: Tracie Drew, DHS, 100 S. Grand Ave. East, 3<sup>rd</sup> Floor, Springfield IL 62762, 217/785-9772.*

corrective action plan within 15 days (currently, 60 days) after its conference with SBE or after an appeal hearing that affirms its On Probation status, the State Superintendent shall recommend to the State Board that the school/district be placed in Nonrecognized status. The district then has 30 days to request another hearing before the State Board makes its final decision. A school that has been Nonrecognized may petition to SBE for restoration to Fully Recognized status if it demonstrates that noncompliance issues prompting the decision have been addressed and steps have been taken to insure that these issues do not recur. The Part 1 rulemaking also clarifies that the

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# Proposed Rulemakings

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appeal procedures currently in rule for other actions (e.g., development or implementation of school improvement plans) do not apply to recognition status appeals.

## Non-Public Schools

The Part 425 amendments replace the current recognition statuses (full, pending, probationary, or none) for non-public schools with the same statuses assigned to public schools (Fully Recognized, Recognized Pending Further Review, On Probation, and Nonrecognized). A school that applies directly to SBE for recognition but is denied due to deficiencies may reapply later or seek recognition via accreditation from an external organization. A school assigned Recognized Pending Further Review status must be notified of the deficiencies that prompted the decision and given an opportunity to correct them. The appeal and hearing procedures outlined in Part 1 for public schools demoted to Recognized Pending Further Review or On Probation status are also applied to non-public schools.

## EDUCATOR PREPARATION

SBE proposed amendments to Standards for School Support Personnel Endorsements (23 IAC 23; 45 Ill Reg 15605), Educator Licensure (23 IAC 25; 45 Ill Reg 15659), Standards for Endorsements in Specific Teaching Fields (23 IAC 27; 45 Ill

Reg 15784), Programs for the Preparation of Principals in Illinois (23 IAC 30; 45 Ill Reg 15789), and Programs for the Preparation of Superintendents in Illinois (23 IAC 33; 45 Ill Reg 15837). The Part 23 rulemaking updates a link and cross references to the American Association for Marriage and Family Therapy Code of Ethics. Amendments to Part 25 implement various Public Acts and respond to stakeholder requests by creating a new short-term approval for paraprofessionals; allowing student teaching in an Early Learning setting to be supervised by a teacher who holds a Gateways Level 5 credential; removing specific science and social science coursework for early childhood and elementary education and removing the requirement of a specific assessment (unavailable for more than a year) for sign language interpreter approval; removing the English language proficiency requirement for the Professional Educator License; allowing candidates to submit alternatives to the video component of the edTPA; and allowing individuals providing mentoring under the National Board for Professional Teaching Standards program to provide “up to” 30 hours of mentoring, instead of “at least” 30 hours, in order to receive a stipend. The Part 27 rulemaking adds an Elementary Mathematics Specialist endorsement and provides a link to the national preparation standards to which applicable programs must align. Amendments to Parts 30 and 33 update national standards for

principal and superintendent preparation programs and remove minimum requirements for in-person instruction so that programs have more flexibility to determine the appropriate format of delivery.

## TEACHER EVALUATION

Finally, SBE proposed amendments to Evaluation of Educator Licensed Employees Under Articles 24A and 34 of the School Code (23 IAC 50; 45 Ill Reg 15877) implementing PA 102-252. The rulemaking requires tenured teachers to be evaluated every 3 (currently 2) years, except for teachers rated as “needs improvement” or “unsatisfactory”, who must be reevaluated at least once in the following school year. Effective 9/1/22, school districts must adopt teacher evaluation plans requiring tenured teachers who are rated “excellent” or “proficient” to be formally evaluated at least once during the 3 school years following receipt of that rating and informally observed at least once during the 2 school years following that rating. The rulemaking also clarifies that qualified evaluators must complete retraining at least once every 5 fiscal years.

*Questions/requests for copies/ comments on the 9 SBE rulemakings through 1/31/22: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago, IL 60661, (312) 783-2757, [rules@isbe.net](mailto:rules@isbe.net)*

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# Proposed Rulemakings

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## ■ PESTICIDES

The DEPARTMENT OF AGRICULTURE proposed an amendment to the Part titled Illinois Pesticide Act (8 IAC 250; 45 Ill Reg 15494) imposing restrictions on the use of Dicamba pesticides for soybeans. (The same restrictions were implemented by a DOA emergency rule effective 2/5/21 through 7/4/21.) The rulemaking prohibits application of Dicamba pesticides on any growing season date after June 20; on any day when temperatures reach, or are forecast by the National Weather Service to reach, 85 degrees or higher; or when winds are blowing toward a residential area or a State nature preserve. Persons applying Dicamba pesticides must consult the Field Watch sensitive crop registry and comply with all associated recordkeeping and label requirements. Violations of this rule will be treated as a “use contrary to label directions” under the Illinois Pesticide Act. Soybean growers will be affected by this rulemaking.

*Questions/requests for copies/ comments through 1/31/22: Pamela Harmon, DOA, State Fairgrounds, P. O. Box 19281, Springfield IL 62794-9281, 217/524-6905, fax 217/785-4505.*

## AABD BENEFITS

The DEPARTMENT OF HUMAN SERVICES proposed amendments to Aid to the Aged, Blind and Disabled (89 IAC 113;

45 Ill Reg 15920) implementing annual changes in the grant adjustment for Supplemental Security Income (SSI) recipients and payment rates for sheltered, personal, or nursing care for calendar year 2022. The SSI grant adjustment is being increased from \$615.90 to \$662.90 per month. Payment rates for care will range from a minimum of \$1341 per month (lowest need category, outside of the Chicago area; currently \$1294/mo) to a maximum of \$1479 per month (highest need category, Chicago area; currently \$1432/mo).

*Questions/requests for copies/ comments through 1/31/22: Tracie Drew, DHS, 100 S. Grand Ave. East, 3<sup>rd</sup> Floor, Springfield IL 62762, 217/785-9772.*

## INSURANCE

The DEPARTMENT OF INSURANCE proposed amendments to the Part titled Misrepresentation and False Warranties (50 IAC 941; 45 Ill Reg 15934) clarifying that misrepresentation of information on an insurance policy shall not result in denial of an insurance claim unless the misrepresentation was made with actual intent to deceive or materially affects the risk assumed by the insurer. If an auto insurance company fails to obtain readily available information concerning named insured drivers on an application prior to issuing a policy, the company cannot then void the policy or deny a claim based on this information after the claim is

filed. An auto insurance policy cannot be voided or an accident claim denied based on identification of a previously undisclosed driver in the household unless the undisclosed driver was driving the vehicle at the time of the accident.

*Questions/requests for copies/ comments through 1/31/22: Norman Schroeder, DOI, 122 S. Michigan Ave., 19<sup>th</sup> Fl., Chicago IL 60603, 312/805-5131, or Susan Anders, DOI, 320 W. Washington St., 4th Fl., Springfield, IL 62767, 217/558-0957.*

## ■ LAND CONSERVATION

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to Conservation Reserve Enhancement Program (CREP) (17 IAC 1515; 45 Ill Reg 15938) that clarify and update requirements for the State CREP program, adjust easement options to make them more desirable for landowners, and add an option for landowners with non-permanent easements to extend their easement at the end of the easement term. (The program, which has both a State and a federal component, compensates land owners who set aside acreage for fish and wildlife habitat or to enhance surface water quality in the Illinois and Kaskaskia River watersheds.) Landowners who had acreage enrolled in a federal

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# Proposed Rulemakings

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CREP contract prior to 5/26/21, or who currently have a State CREP agreement, may add 15 years to their State enrollment or make that enrollment permanent. (Formerly, State CREP agreements were for either 15 or 35 years.) Landowners who enroll in federal CREP on or after 5/26/21 may enter into a new State CREP agreement for 15 years or permanently. All acreage enrolled in federal CREP must be included in the State CREP agreement. Other provisions address the content of enrollment applications, conservation management plans and modifications, enrolling additional acres in an existing plan, and payments for enrolled land. Farmers and other land owners may be affected by this rulemaking.

*Questions/requests for copies/ comments through 1/31/22: Nicole Thomas, DNR, One Natural Resources Way, Springfield, IL 62702, 217/782-1809.*

## ■ TOBACCO TAXES

The DEPARTMENT OF REVENUE proposed amendments to Tobacco Products Tax Act of 1995 (86 IAC 660; 45 Ill Reg 15985) implementing PA 102-40. The PA and the rulemaking remove

devices, cartridges, containers, substances, and solutions that contain medical or adult use cannabis subject to tax under the Cannabis Regulation and Tax Act from the definition of an electronic cigarette under the Tobacco Products Tax Act, and relieve cannabis cultivators and dispensaries from the obligation to pay tobacco products tax on these items. The rulemaking also clarifies that, although the revised definition of “electronic cigarette” has been made retroactively effective to 6/28/19, cannabis dispensaries that sold the affected items cannot claim a credit or refund for tobacco taxes paid between 6/28/19 and 6/25/21 (the effective date of PA 102-40). Cannabis cultivators and dispensaries may be affected by this rulemaking.

*Questions/requests for copies/ comments through 1/31/22: Richard S. Wolters, DOR, 101 West Jefferson St., Springfield IL 62794, (217) 782-2844.*

## STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to Pay Plan (80 IAC 310; 45 Ill Reg 15499) that update various employment titles along with the list of divided classes

(positions represented by more than one bargaining unit). The titles of Automotive Shop Supervisor and Educator-Career and Technical are added to the divided classes list effective 6/23/21. The list of merit compensation titles is updated as follows: Historical Documents Conservator I is replaced by Historical Documents Conservator; Historical Research Editor II is replaced by Historical Research Editor; Curator of the Lincoln Collection and Local Historical Services Representative are removed; Insurance Analyst I, II, III, and IV are replaced by Insurance Analyst, Insurance Analyst Specialist and Insurance Senior Analyst; Pension and Death Benefits Technician I and II are replaced by Retirement Systems Benefits Technician I and II; and Veterans Educational Specialist I, II, and III are replaced by Veterans Educational Specialist. Finally, the title of Historical Actor at the Abraham Lincoln Presidential Library and Museum is assigned to an AFSCME bargaining unit and pay grade.

*Questions/requests for copies/ comments through 1/31/22: Jason R. Doggett, CMS, 504 William G. Stratton Bldg., Springfield IL 62706, 217/782-4267, fax: 217/524-4570, CMS.PayPlan@Illinois.gov*

## JCAR Meeting Action

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At its 12/15/21 meeting, the Joint Committee on Administrative Rules took the following actions.

### OBJECTIONS

JCAR objects to the Department of Financial and Professional Regulation emergency rulemaking titled Orthotics, Prosthetics and Pedorthics Act (68 IAC 1325; 45 Ill Reg 14508) because the Department did not meet the criteria established under 1 IAC 230.400 (Criteria for Review) by not clearly and completely stating, in writing, that the emergency situation has arisen through no fault of the agency. The Department's statement of emergency states the COVID-19 pandemic as the reason for emergency and further relies on the Director's 8/31/21 variance, which extended the deadline for license renewal, as for the timing of the emergency situation. The Department, throughout the COVID-19 pandemic, has permitted numerous other professions to complete CE online by utilizing the regular rulemaking process. The variance that the Department contends aided the emergency situation was filed on 8/31, while this emergency rule was not filed until 11/1/2021. Emergency rules are appropriate when an emergency situation arises that creates an immediate need for a rule change, that precludes the use of the regular rulemaking process, and that arises through no fault of the Department. Filing emergency rules based on an extension that was issued two months prior and to address an issue the Department has historically addressed through the regular rulemaking process does not meet this standard. Furthermore, JCAR objects to the Department's use of blanket variances as a tool to waive requirements promulgated in the Illinois Administrative Code. On 8/31/21, the Department issued a variance extending the renewal deadline for all licensees under this Part to 12/31/21. 68 IAC 1325.55(a) sets the renewal deadline at 9/30 of each odd-numbered year. 68 IAC 1325.75 grants the Department the authority to grant variances to licensees on an individual basis. Policy of general applicability, especially when it is contrary to adopted rule, should not be changed through variance but should rather utilize the regular rulemaking process to allow the public the opportunity to comment. JCAR further recommends that the

Department be thorough in explaining the emergency situation at hand that reasonably constitutes a threat to the public interest, safety or welfare when adopting an emergency rule. Any explanation of emergency should provide sufficient facts and reasoning to clearly demonstrate that an emergency situation exists and that the emergency situation requires the adoption of a rule upon fewer days than is required by the regular rulemaking process.

JCAR also objects to the DFPR emergency rulemaking titled Clinical Social Work and Social Work Practice Act (68 IAC 1470; 45 Ill Reg 15104) because the Department did not meet the criteria established under 1 IAC 230.400 for use of emergency rulemaking. The Department has not clearly and completely stated, in writing, its reasons for finding that an emergency exists and has not demonstrated that the emergency situation has arisen through no fault of the agency. The Department has been facing this situation with numerous other licenses throughout the COVID-19 pandemic. This emergency rule was filed on 11/9/2021. Furthermore, JCAR objects to the use of variances as a tool for blanket amendments to the Illinois Administrative Code. On 10/20/21, DFPR issued a variance extending the renewal deadline for all licensees under this Part to 2/28/22. 68 IAC 1470.90(a) sets the renewal deadline at 11/30 of each odd-numbered year. 68 IAC 1470.100 grants DFPR the authority to grant variances to licensees on an individual basis. Policy of general applicability, especially when it is contrary to adopted rule, should not be changed through variance but should rather utilize the regular rulemaking process to allow the public the opportunity to comment. JCAR further recommends that the Department be thorough in explaining the emergency situation at hand that reasonably constitutes a threat to the public interest, safety or welfare when adopting an emergency rule. Any explanation of emergency rule should provide sufficient facts and reasoning to clearly demonstrate that an emergency situation exists and that the emergency situation requires the adoption of a rule upon fewer days than is required by the regular rulemaking process.

## Second Notices

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The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will appear in next week's *Illinois Register* and be considered at the January 11, 2022, JCAR meeting in Springfield. Other items not published in the *Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

### IL HOUSING DEVELOPMENT AUTHORITY

Federal Emergency Rental Assistance Programs (47 IAC 378; 45 Ill Reg 12941) proposed 10/15/21

### STATE BOARD OF EDUCATION

After-School Grant Programs (23 IAC 268; 45 Ill Reg 10905) proposed 7/10/21

## Joint Committee on Administrative Rules

Senator Bill Cunningham, <i>co-chair</i>	Representative Tom Demmer
Senator John F. Curran	Representative Michael Halpin
Senator Donald DeWitte	Representative Frances Ann Hurley
Senator Kimberly Lightford	Representative Steven Reick
Senator Tony Muñoz	Representative Curtis Tarver, II
Senator Sue Rezin	Representative Keith Wheeler, <i>co-chair</i>

**Kim Schultz**  
**Executive Director**